IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-283

PAUL R. BUTE, WILLIAM FEDOR, GEORGE DAVID DE PEDER, RAYMOND G. PATRAS, THOMAS R. BURNS, RUSSELL J. LEAVY, BERNARD J. SCHROEDER and JAMES JAEGER,

Petitioners,

vs.

ROBERT J. QUINN, as Fire Commissioner for the City of Chicago, and WILLIAM E. CAHILL, REGINALD DU BOIS, QUINTON J. GOODWIN and CHARLES A. POUNIAN, as Members of the Chicago Civil Service Commission, and THE CITY OF CHICAGO, a Municipal Corporation,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

BRIEF FOR RESPONDENTS IN OPPOSITION

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Midwest Law Printing Co., Chicago 60601, FInancial 6-3988

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OPINIONS BELOW

The opinion of the District Court (App. A of Petition) and the opinion of the United States Court of Appeals for the Seventh Circuit (App. B of Petition) have not been reported.

JURISDICTION

The jurisdictional requisites are adequately set forth in the Petition.

QUESTIONS PRESENTED

1. Whether the municipal employee residency requirement is rationally related to a proper governmental interest of the City.
2. Whether the municipal employee residency requirement denies petitioners any fundamental rights.
3. Whether the municipal employee residency ordinance is unconstitutionally vague.
4. Whether the municipal employee residency ordinance is unconstitutional because it includes no provision for exceptions.

ORDINANCE AND REGULATIONS INVOLVED

The ordinance, Municipal Code of the City of Chicago, Chapter 25, Section 25-30, and the Regulation of the Chicago Fire Department, Section 51.116, are set forth in the Petition at pages 3 and 4.

STATEMENT

The statement set forth in the Petition at pages 4 through 8 adequately describes the case.

ARGUMENT

I.

THE MUNICIPAL RESIDENCY REQUIREMENT IS RATIONALLY RELATED TO SIGNIFICANT AND PROPER GOVERNMENTAL PURPOSES.

Petitioners assert that they are denied equal protection of the laws by the City of Chicago's requirement of residence as a condition of municipal employment. They argue that a residency requirement is not rationally related to any proper governmental interest. This argument was recently rejected by this Court in a review of the Philadelphia residency ordinance in *McCarthy v. Philadelphia Civil Service Commission*, 424 U.S. 645 (1976). In the *McCarthy* opinion this Court noted that this kind of ordinance was held not irrational in *Detroit Police Officers Association v. City of Detroit*, 405 U.S. 950 and also cited with approval *Wardwell v. Board of Education of Cincinnati*, 529 F.2d 625 (6th Cir., 1976), which found several rational bases for a Cincinnati residence requirement for public school teachers. Other recent decisions which have acknowledged a rational relationship between municipal employee residence requirements and one or more legitimate state purposes include *Wright v. City of Jackson Mississippi*, 506 F.2d 900 (5th Cir. 1975); *Ector v. City of Torrance*, 10 Cal. 3d 129, 514 P. 2d 433 (1973, cert. denied, 415 U.S. 935, and *Salt Lake City Fire Fighters Local 1645 v. Salt Lake City*, 22 Utah 2d 115, 449 P. 2d 239 (1969).

In this case respondents have identified several specific and significant interests which are advanced by the requirement of residency as applied to firemen. These include the reduction of unemployment among inner-city minority groups, relief from the aggravation

of racial resentments caused by employment of an absentee force in the City's uniformed services, and the ready availability of resident firefighters in the event of major fire emergencies.

Petitioners are particularly critical of the claim that the residency requirement reduces urban minority unemployment. (Petition, pages 19 through 20.) It is apparent, however, that recruitment of fire department personnel from the entire Greater Chicago area, which an abandonment of the residency requirement would entail, would mean that fewer city residents, including fewer of the city's minority residents, will have access to this employment. Nor are respondents able to accept petitioners' suggestion that minority group members may be unemployable or lack the expertise, experience and dedication necessary to become qualified firefighters and will therefore gain no advantage as a result of recruitment exclusively from within the City.

Petitioners also deny that a resident fire department is helpful in avoiding the antagonisms which are likely to exist between uniformed municipal employees and urban racial groups. (Petition, page 20) However the disposition of some inner city populations to regard a city fire department substantially composed of suburbanites as a sort of mercenary army is not a novel notion. In *Krzewinski v. Kugler*, 338 F. Supp. 492 (D.C. N.J. 1972) a three judge district court upheld a residence rule as applied to both fire and police personnel on precisely this basis. That court declared at 338 F. Supp. 500, 501:

> To the community, the fire department is another link in the chain of law enforcement. Firemen wear uniforms which fact, in the eyes of those dissatisfied with the establishment, makes the firemen part of a paramilitary group determined to do them harm. Were firemen also to live outside the municipality,

> the tension which already exists might easily be heightened. Investigations by the fire department are not at all uncommon, and criminal sanctions are frequently brought into play when local fire ordinances are enforced. . . . Firemen as well as police are routinely harassed, attacked and even shot at during the course of their duty throughout the nation's cities. Whatever this Court's attitude might be, urban communities clearly choose to put firemen and police in the same class. The need to develop community rapport and to put an end to misunderstanding and intolerance is therefore apparently just as compelling a state interest with regard to firemen as with policemen.

Petitioners' rejection of the residence ordinance as a "socio-economic experiment" which they characterize as "too little, too late" (Petition, page 21) is inaccurate and cavalier. The residence requirement has been a part of Chicago's civil service code for more than 50 years and is therefore hardly experimental. And increased minority employment in the civil service and the improvement of community relations through police and fire departments identifiable with the community are purposes which should not be discarded simply because they do not bring complete solutions of urban problems.

Petitioners also argue that if given an opportunity they would refute the claim that resident firemen afford greater emergency protection for the city by proof that firemen are not emergency personnel. (Petition, page 19) Plainly if firemen are not "emergency personnel" then the expression is without meaning. Moreover, petitioners' assertion in this Court that they intend to prove firemen not to be emergency personnel is an intention never explained to the district court or the court of appeals.

For these reasons it is submitted that the City's residence ordinance is rationally and reasonably related to governmental interests of great importance.

II.

THE RESIDENCY REQUIREMENT DENIES PETITIONERS NO FUNDAMENTAL RIGHTS.

Petitioners argue that the City's requirement of residency for municipal employment deprives them of "freedom of choice with respect to certain basic matters of procreation, marriage and family life." (Petition, page 15.) Few would disagree with petitioners' views regarding the high value of marriage and family life but respondents do deny that the residency ordinance denies or limits any matters basic to the family or marital relationship. Contrary to their suggestions petitioners simply do not demonstrate that the residency ordinance invades rights to privacy, to have children, to enjoy family life free of interference, to associate with whomever they wish, to send their children to private or parochial schools, to join or attend the church of their choice, or to utilize any shopping, health care or recreational facilities they wish. Nor does it compel them to remain in any particular neighborhood or type of neighborhood or restrict them from entry into a community of any ethnic, racial, cultural or social type they might choose. Thus, assuming that many of these interests are basic and do involve "fundamental rights," it is nevertheless clear that petitioners can demonstrate no denial of the rights they mention.

It is submitted that the contentions of petitioners are in substance identical with those presented by the appellant in *McCarthy v. Philadelphia Civil Service Commission*, 424 U.S. 645 (1976) (discussed *supra*, page

3.) As the opinion of the Commonwealth Court of Pennsylvania (19 Pa.C. 383, 339 A. 2d 634 (1975)) reveals, McCarthy, a Philadelphia fireman, maintained a residence in New Jersey where he spent as much time as he did at his mother's home in Philadelphia. He continued the marital relationship with his wife who lived upon property which the couple owned in New Jersey. He was the sole support of his wife and his children who attended school in New Jersey. McCarthy contended that Philadelphia's residence ordinance, pursuant to which he was discharged upon proof of these facts, was unconstitutional. This Court in upholding the constitutionality of the ordinance declared:

> In this case appellant claims a constitutional right to be employed by the city of Philadelphia *while* he is living elsewhere. There is no support in our cases for such claim. [424 U.S. 646 646-7]

The interests asserted by petitioners herein as infringed by the Chicago residence ordinance are the same as those claimed by McCarthy. But whether these interests are viewed as subsumed within the fundamental constitutional right to travel or are characterized as family or marital rights it is submitted the petitioners' claim of a denial of equal protection is without merit.

III.

THE CITY'S MUNICIPAL RESIDENCE ORDINANCE IS NOT VAGUE.

Section 25-30 of the Municipal Code of the City of Chicago provides:

> All officers and employees in the classified civil service of the City shall be actual residents of the City. Any officer or employee in the classified civil service of the City who shall fail to comply with the provisions of this section shall be discharged from the service of the City in the manner provided by law.

Petitioners contend that this ordinance is so vague that its enforcement results in a denial of due process because "actual resident" is an undefined term. (Petition pages 23 through 28)

The meaning of the term "resident" has been considered in a variety of contexts by Illinois courts. Although modern living habits vary in many respects the statement of the court in *Hughes v. Illinois Public Aid Commission*, 2 Ill. 2d 374 (1954) provides a clear and functional definition to which Illinois courts have consistently adhered. In *Hughes* it was stated:

> Two elements are necessary to create a residence, (1) bodily presence in that place and (2) the intention of remaining in that place; neither alone is sufficient to create a legal "residence." [2 Ill. 2d 380]

See *Garrison v. Garrison*, 107 Ill. App. 2d 311 (1969) and *Sisters of the Third Order of St. Francis v. Groveland Township*, 7 Ill. App. 2d 278 (1972). This definition concededly does not provide a mathematical standard against which items such as the number of days per week in the city, the dwelling place of the employee's family, the frequency and duration of visits to out-of-the-City vacation homes and a multitude of other such factors can be precisely measured in determining compliance with the ordinance. However, respondents submit that this definition has supplied petitioners and other municipal employees with as reliable and clear a definition as is feasible.

Petitioners also complain that respondents abandoned long standing residency "criteria" such as auto registration cards, driver's licenses, voter's registration cards and receipted utility bills. (Petition, pages 25-27) However, these documents have never been the "criteria" by which residency is determined but are rather merely evidence through which residence may be

proved. Unfortunately such documents reflect little more than the answers stated in applications and they may therefore be unreliable evidence. It is for that reason that questions relating to such matters as church memberships, school enrollment of children and ownership of suburban residential property were asked of employees as additional and more accurate indicators of presence and intent to remain within the City. Plainly this constituted no alteration or concealment of the standards applicable in determining residency and therefore did not deprive petitioners of due process.

IV.

THE RESIDENCE ORDINANCE IS NOT UNCONSTITUTIONAL FOR THE FAILURE TO PROVIDE FOR EXCEPTIONS.

Petitioners also argue that the ordinance is unconstitutional because it does not make provision for excepting employees under some circumstances from the requirement of living within the City. (Petition, pages 10 through 12.) Petitioners have not indicated either by their argument or by citation of authority what constitutional guarantee is violated by this omission. It must be conceded that this ordinance will be experienced by some as more inconvenient than by others. The same criticism could surely be made of virtually every statute and ordinance. Yet, it is submitted that this fact does not render a measure unconstitutional.

CONCLUSION

For the foregoing reasons it is respectfully submitted that the Petition for a writ of certiorari should be denied.

Respectfully submitted,

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November 18, 1976